

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 LAS VEGAS SANDS CORP., a Nevada  
5 corporation,

6 Plaintiff,

7 v.

8 UNKNOWN REGISTRANTS OF  
9 www.wn0000.com, www.wn1111.com,  
10 www.wn2222.com, www.wn3333.com,  
11 www.wn4444.com, www.wn5555.com,  
12 www.wn6666.com, www.wn7777.com,  
13 www.wn8888.com, www.wn9999.com,  
14 www.112211.com, www.4456888.com,  
15 www.4489888.com, www.001148.com,  
16 and www.2289888.com,

17 Defendants.

Case No. 2:15-cv-02341-APG-NJK

**DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION**

(ECF No. 20)

14 This is a trademark infringement action brought by Las Vegas Sands Corp. ("Las Vegas  
15 Sands") against the registrants of Internet domains that have been using, and that are continuing  
16 to use, Las Vegas Sands' federally registered trademarks in commerce in connection with the  
17 operation of online casinos.

18 The Complaint was filed and Summons issued on December 9, 2015. (ECF Nos. 1, 6.)  
19 The Summons and Complaint were served by email on February 10, 2016, in accordance with  
20 my prior order authorizing such service. (ECF Nos. 9, 17.) None of the Defendants having  
21 answered or otherwise responded to the Complaint within the time allowed, on March 9, 2016,  
22 the Clerk of the Court entered the Defendants' default. (ECF No. 19.) On March 10, 2016, Las  
23 Vegas Sands moved the Court for entry of a default judgment and permanent injunction. (ECF  
24 No. 20.) I have considered the motion and related papers.

25 **I. FINDINGS OF FACT**

26 I hereby make the following findings of fact:

27 **Las Vegas Sands and Its Trademarks**

28 1. Las Vegas Sands is a Fortune 500 company that is publicly traded on the New

1 York Stock Exchange. Las Vegas Sands develops destination resort properties that feature  
2 premium accommodations, world-class gaming and entertainment, convention and exhibition  
3 facilities, celebrity chef restaurants, and many other amenities. Las Vegas Sands' properties  
4 include The Venetian, The Palazzo, and The Sands Expo and Convention Center in Las Vegas,  
5 Nevada; Sands Bethlehem in Bethlehem, Pennsylvania; and Marina Bay Sands in Singapore.  
6 Through its 70.2% ownership of Sands China, Ltd., Las Vegas Sands also owns and operates  
7 The Venetian Macao, Sands Macao, Four Seasons Hotel Macao, and Sands Cotai Central in  
8 Macao. (ECF No. 2-1, Declaration of Dave Horton (the "Horton Decl.") ¶ 3.)

9       2. The Venetian is a luxury hotel and casino resort on the Las Vegas Strip ("The  
10 Venetian Las Vegas"). The resort opened for business on May 3, 1999, and was built at a cost  
11 of \$1.5 billion. The Venetian Las Vegas is one of the ten largest hotels in the world. The resort  
12 has more than 4,000 suites situated in a 35-story three-wing tower, and a 120,000 square foot  
13 casino with approximately 110 table games and 1,370 slot machines, among other amenities.  
14 Las Vegas Sands maintains a website at <venetian.com> through which it markets its hotel and  
15 casino services and, among other things, provides information and accepts hotel room  
16 reservations. (Horton Decl. ¶ 4.)

17       3. The Venetian Macao is a 40-story, \$2.4 billion property on the Cotai Strip. The  
18 10,500,000 square foot resort is the largest single structure hotel building in Asia, one of the  
19 largest buildings in the world by area, and the largest casino in the world. The resort opened on  
20 August 28, 2007. The resort has 3,000 suites and a 550,000 square foot casino with 3,400 slot  
21 machines and 800 table games, among other amenities. The Venetian Macao maintains a website  
22 at <venetianmacao.com> through which it, among other things, provides information and accepts  
23 hotel room reservations. (The Venetian Las Vegas and The Venetian Macao shall be collectively  
24 referred to as the "Venetian Properties"). (Horton Decl. ¶ 5.)

25       4. As a result of its longstanding and prominent use of the VENETIAN trademark in  
26 commerce in connection with the Venetian Properties, Las Vegas Sands has developed common  
27 law trademark rights in the VENETIAN trademark. (Horton Decl. ¶ 6.)

28       5. In addition to its common law rights, Las Vegas Sands owns trademark

registrations for the VENETIAN trademark worldwide. In the United States, Las Vegas Sands' federal trademark registrations include, among others, the following:

TRADEMARK	REG. NO.	DATE OF FIRST USE	GOODS/SERVICES
THE VENETIAN	2,507,362	5/4/1999	Casino and gaming services; providing casino and gaming facilities; entertainment, namely, live musical performances, theatrical productions and comedy productions; health clubs; amusement centers and arcades; providing casino and gaming services by means of web sites and a global computer network
THE VENETIAN RESORT HOTEL CASINO	2,350,633	5/4/1999	Casino and gaming services; gaming facilities; entertainment, namely, live musical performances, theatrical productions and comedy; sporting events; health clubs; amusement centers and arcades; providing casino and gaming services by means of web sites and a global computer network
VENETIAN	2,507,363	5/4/1999	Casino and gaming services; providing casino and gaming facilities; entertainment, namely, live musical performances, theatrical productions and comedy productions; health clubs; amusement centers and arcades; providing casino and gaming services by means of web sites and a global computer network

(Las Vegas Sands' federal trademark registrations and common law rights shall be collectively referred to as the "VENETIAN Mark"). (Horton Decl. ¶ 7.)

6. Las Vegas Sands also owns federal trademark registrations for the following design marks, for use in connection with, among others, "casino and gaming services:"



Reg. No. 2,352,455



Reg. No. 2,655,917

(collectively, "the VENETIAN Design Mark"). (Horton Decl. ¶ 8.)

7. Based on its federal trademark registrations and its longstanding and exclusive use of the VENETIAN Mark and the VENETIAN Design Mark, Las Vegas Sands owns the exclusive right to use the VENETIAN Mark and the VENETIAN Design Mark in commerce.



(Horton Decl. ¶ 9.)

8. The VENETIAN Mark and the VENETIAN Design Mark have become distinctive and famous in the United States for, among other services, casino and gaming services. (Horton Decl. ¶ 10.)

### The Defendants' Infringing Conduct

9. The Defendants have set up a network of Internet websites that are accessible to U.S. citizens that are designed to drive Internet users to one or more online casinos. (Horton Decl. ¶ 11.) The infringing websites appear at the following Internet locations: www.wn0000.com, www.wn1111.com, www.wn2222.com, www.wn3333.com, www.wn4444.com, www.wn5555.com, www.wn6666.com, www.wn7777.com, www.wn8888.com, www.wn9999.com, www.112211.com, www.4456888.com, www.4489888.com, www.001148.com, and www.2289888.com (collectively, the "Domains"). GoDaddy.com, LLC is the registrar of each Domain. (Horton Decl. ¶ 12.)

10. The first ten Domains (*i.e.*, www.wn0000.com, www.wn1111.com, www.wn2222.com, www.wn3333.com, www.wn4444.com, www.wn5555.com, www.wn6666.com, www.wn7777.com, www.wn8888.com, www.wn9999.com) display a webpage featuring an online casino, a depiction of which is set forth below:





(Horton Decl. ¶ 13.)

11. This homepage operates an online casino purporting to be associated with, affiliated with, approved by, or sponsored by Las Vegas Sands. As the above screenshot clearly demonstrates, to mislead customers, the webpage prominently features the VENETIAN Design Mark at the top, left-hand, corner of the page. (Horton Decl. ¶ 14.)

12. The remaining five Domains (*i.e.*, www.112211.com, www.4456888.com, www.4489888.com, www.001148.com, and www.2289888.com) display a webpage featuring an identical online casino, a depiction of which is set forth below:



13. This homepage also operates an online casino purporting to be associated with,

1 affiliated with, approved by, or sponsored by Las Vegas Sands. As the above screenshot clearly  
2 demonstrates, to mislead customers, the webpage prominently features the VENETIAN Mark  
3 and the VENETIAN Design Mark at the top, center, of the page. (Horton Decl. ¶ 16.)

4 14. The Domains offer specific casino games such as card games, roulette, or dice  
5 games, the same games offered by Las Vegas Sands at The Venetian and The Venetian Macao.  
6 (Horton Decl. ¶ 17.)

7 15. The Domains permit gamblers to register, create individual financial accounts,  
8 and gamble online. (Horton Decl. ¶ 18.)

9 16. Las Vegas Sands has not consented to, approved of, or authorized Defendants'  
10 use of the VENETIAN Mark or the VENETIAN Design Mark in connection with the Domains.  
11 (Horton Decl. ¶ 19.)

12 **Las Vegas Sands Has Suffered and Will Continue to Suffer Irreparable Harm**

13 17. The VENETIAN Mark and the VENETIAN Design Mark are embodiments of the  
14 goodwill and reputation Las Vegas Sands and its predecessors have developed as a provider of  
15 entertainment and casino services. As a result of Defendants' blatant exploitation of Las Vegas  
16 Sands' trademarks without Las Vegas Sands' consent, Las Vegas Sands has lost control over the  
17 VENETIAN Mark and the VENETIAN Design Mark. This loss of control over its goodwill and  
18 reputation is irreparable and Las Vegas Sands cannot be adequately compensated by an award of  
19 money damages alone. (Horton Decl. ¶ 20.) As set forth above, the Defendants are operating  
20 Internet casinos that are accessible to consumers located in the United States. (Horton Decl.  
21 ¶ 21.) The Defendants are doing so using identical versions of the VENETIAN Mark and the  
22 VENETIAN Design Mark used by Las Vegas Sands. (*Id.*) In addition, both Las Vegas Sands  
23 and the Defendants are providing the same services under the VENETIAN Mark and the  
24 VENETIAN Design Mark. Las Vegas Sands has been providing gaming services under the  
25 VENETIAN Mark and the VENETIAN Design Mark since 1999. (*Id.*) The Defendants' online  
26 casinos provide gaming services and, in some cases, purport to allow users to participate in live  
27 casino games being played at brick-and-mortar casinos by proxy. (*Id.*)

28 18. Because of the likelihood that confused consumers will mistakenly attribute to



1 Las Vegas Sands defects or negative impressions they have of Defendants' gaming services, Las  
2 Vegas Sands' reputation has been harmed and continues to be threatened. (Horton Decl. ¶ 22.)  
3 Consumer confusion has occurred, is continuing to occur, and is inevitable, resulting in a loss of  
4 control over Las Vegas Sands' reputation and goodwill. (*Id.*)

5 19. Here, the gambling public is aware of the Defendants' and similar online casinos,  
6 have had negative experiences with them, and have associated those negative experiences with  
7 Las Vegas Sands. (Horton Decl. ¶ 23.) For example, as cited in an earlier case filed by Las  
8 Vegas Sands against similar online casinos, on or about January 10, 2014, Las Vegas Sands  
9 received an email from a person who claims to have been cheated by an online casino operated at  
10 www.358.com, a Chinese Internet casino that used Las Vegas Sands' world famous "Sands"  
11 trademark. (*Id.*) The email states:

12 I am playing the game at sands (www.358.com). (www.358.com) is cheating me.  
13 They do not pay money to me from 2014-1-8. They are cheats. I am very angry.  
14 My account name is myray. Please help me. I am in Shanghai, China.

15 (*See* No. 2:14-cv-00424-JCM-NJK, *Las Vegas Sands Corp. v. First Cagayan Leisure & Resort*  
16 *Corp. et al.*, Doc. 4, Decl. of Dave Horton in Supp. of Pl.'s *Ex Parte* Mot. for TRO, Alternative  
17 Service, and Prelim. Inj., dated March 19, 2014 ¶ 24.) (Emphasis added.) (Horton Decl. ¶ 23.)

18 20. Additional consumers have been deceived and confused by the Defendants' use of  
19 the VENETIAN Mark and the VENETIAN Design Mark on their online casinos but have not  
20 reported the Defendants' fraudulent conduct to Las Vegas Sands. (Horton Decl. ¶ 24.) Based  
21 upon their negative experiences, persons who associate Las Vegas Sands with the Defendants'  
22 fraudulent activities due to the Defendants' use of the VENETIAN Mark and the VENETIAN  
23 Design Mark have a negative opinion of Las Vegas Sands, and are extremely unlikely to ever  
24 become customers or repeat consumers of Las Vegas Sands' gaming services, and are likely to  
25 tell others about their negative experiences. (*Id.*)

26 21. In addition, Las Vegas Sands has achieved an excellent reputation for providing  
27 gaming services under the VENETIAN Mark and the VENETIAN Design Mark, in-part, because  
28 Las Vegas Sands' casinos are regulated and licensed in their respective jurisdictions, and adhere  
to the federal, state, and local statutes, rules, regulations, and ordinances that govern the

1 provision of gaming services in their respective jurisdictions. (Horton Decl. ¶ 25.) Many of  
2 these laws, rules, regulations, and ordinances are designed to, among other things, inspire  
3 consumer confidence in gaming, protect the consuming public from fraud and other  
4 unscrupulous gaming practices, provide a means of settling gambling disputes, and protect  
5 vulnerable persons. (*Id.*) For example, in Nevada, Las Vegas Sands may not provide gaming  
6 services to persons under 21 years of age. *See* Nev. Rev. Stat. § 463.350. (*Id.*) Las Vegas  
7 Sands' lawful gaming activities are also subject to close scrutiny and oversight by State gaming  
8 regulators. (*Id.*) In contrast, the Defendants' online casinos are not regulated by any legitimate  
9 governing body, do not operate according to any recognized standards, and appear to have no  
10 quality control safeguards, consumer protection safeguards, or legitimate means of resolving  
11 gaming disputes. (*Id.*) Thus, there are no safeguards preventing at-risk persons, such as persons  
12 under the age of 21, from being defrauded or otherwise victimized by the Defendants' casinos.  
13 (*Id.*) Upon information and belief, in addition to engaging in fraudulent gaming practices, the  
14 Defendants are providing gaming services, without restriction, to any person who utilizes  
15 Defendants' services. (*Id.*) To the extent the Defendants have engaged in fraudulent gaming  
16 practices and are providing gaming services to such persons, Las Vegas Sands' reputation has  
17 been damaged by the Defendants' use of the VENETIAN Mark and the VENETIAN Design  
18 Mark. (*Id.*)

19 22. Las Vegas Sands is also losing business to the Defendants' online casinos.  
20 (Horton Decl. ¶ 26.) Persons who would otherwise travel to the United States to gamble at Las  
21 Vegas Sands' casinos in Las Vegas, Nevada, are instead gambling at the Defendants' online  
22 casinos. (*Id.*) The true scope and extent to which the Defendants' activities have resulted in lost  
23 revenue and will continue to do so is not known, cannot be measured, and will continue in the  
24 absence of a preliminary injunction. (*Id.*)

25 23. In addition, it is unlikely that Las Vegas Sands will be able to recover on a money  
26 judgment entered against the Defendants. (Horton Decl. ¶ 27.) The defendants are known to use  
27 false identities and are believed to be principally located in mainland China. (*Id.*)

28 24. Moreover, Defendants are creating the perception that Las Vegas Sands has



1 approved of, authorized, affiliated itself with, or sponsored Defendants' online gambling services  
 2 when in fact it has not. (Horton Decl. ¶ 28.) Las Vegas Sands publicly opposes Internet  
 3 gambling and has formed the Coalition to Stop Internet Gambling, an advocacy group dedicated  
 4 to preventing the proliferation of Internet gambling. (*Id.*) Las Vegas Sands and the Coalition to  
 5 Stop Internet Gambling are opposed to the proliferation of online gambling for, among other  
 6 reasons, the belief that insufficient safeguards exist to protect children, the elderly, the mentally  
 7 handicapped, and others from being defrauded by unscrupulous and unregulated Internet casinos,  
 8 like the ones operated by the Defendants in this case. (*Id.*) The Defendants' use of the  
 9 VENETIAN Mark and the VENETIAN Design Mark on the homepages of their online casinos,  
 10 even though unauthorized by Las Vegas Sands, affects Las Vegas Sands' credibility and  
 11 threatens to interfere with Las Vegas Sands' and the Coalition to Stop Internet Gambling's  
 12 efforts to stop the proliferation of Internet gambling. (*Id.*) This harm cannot be quantified or  
 13 adequately redressed by an award of money damages, and therefore is irreparable.

14 25. The injuries Las Vegas Sands has suffered, namely, injury to its reputation, loss of  
 15 sales revenue, and the interference with its efforts to stop the proliferation of Internet gambling  
 16 are injuries that cannot be measured or compensated for by an award of money damages, and,  
 17 therefore, are irreparable and will continue in the absence of a preliminary injunction. (Horton  
 18 Decl. ¶ 29.)

## 19 **II. CONCLUSIONS OF LAW**

20 I hereby make the following conclusions of law:

### 21 **A. The *Eitel* Factors**

22 26. The Ninth Circuit has adopted seven factors that courts may consider when  
 23 adjudicating a motion for default judgment. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.  
 24 1986). The *Eitel* factors are: (1) the possibility of prejudice to the plaintiff; (2) the merits of the  
 25 plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake  
 26 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default  
 27 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil  
 28 Procedure favoring decisions on the merits. *Eitel*, 782 F.2d at 1471–72.

***Factor 1 - The Possibility of Prejudice to the Plaintiff***

27. The first *Eitel* factor considers whether the plaintiff will suffer prejudice if a default judgment is not entered. *See PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). The Defendants were made aware of their infringing conduct when they were served with the Summons and Complaint. (ECF Nos. 1, 17.) However, The Defendants have not answered or otherwise defended against Las Vegas Sands' claims and their default has been entered. (ECF Nos. 18-19.) The Defendants' failure to plead or otherwise defend against Las Vegas Sands' claims is prejudicial to Las Vegas Sands because its claims cannot be resolved on the merits absent the Defendants' participation, and, as a result, Las Vegas Sands will effectively be denied relief absent entry of a default judgment. *Id.* ("Potential prejudice to Plaintiffs favors granting a default judgment. If Plaintiffs' motion for default judgment is not granted, Plaintiffs will likely be without other recourse for recovery."); *O'Brien v. United States*, No. 2:07-cv-00986-GMN-GWF, 2010 U.S. Dist. LEXIS 101941, at \*11 (D. Nev. Sept. 9, 2010) ("Villamor has failed to appear and defend this suit, delaying the judicial process. Without a default judgment the United States cannot have a final resolution of its tax claims, and thus will suffer prejudice."); *Coach Servs., Inc. v. YNM, Inc.*, No. 2:10-cv-02326-JST (PLAx), 2011 WL 1752091, at \*2 (C.D. Cal. May 6, 2011) (finding that the first *Eitel* factor favored the plaintiff because the defendant infringed the plaintiff's trademark rights and thereby harmed the plaintiff's reputation). Accordingly, the first *Eitel* factor favors entry of default judgment.

***Factors 2 and 3 - The Merits of Plaintiff's Substantive Claims and the Sufficiency of the Complaint***

28. The second and third *Eitel* factors favor default judgment where the complaint sufficiently states a claim for relief under the "liberal pleading standards embodied in Rule 8" of the Federal Rules of Civil Procedure. *See Fed. R. Civ. P. 8; Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir. 1978). The Complaint alleges five causes of action all of which derive from the same nucleus of operative fact, namely, the Defendants' use of the VENETIAN Mark and the VENETIAN Design Mark on Internet casino websites to falsely affiliate themselves with Las Vegas Sands. The Complaint alleges causes of action for: (1) trademark infringement under the



1 Lanham Act, 15 U.S.C. § 1114; (2) unfair competition under the Lanham Act, 15 U.S.C. §  
 2 1125(a); (3) trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c); (4) common law  
 3 trademark infringement; and (5) common law unfair competition.

4 29. To state a claim for trademark infringement, a plaintiff must allege: (1) ownership  
 5 of a valid, protectable mark; and (2) that the alleged infringer is using a confusingly similar  
 6 mark. *Herb Reed Enterprises, LLC v. Florida Ent'mt Mgm't, Inc.*, 736 F.3d 1239, 1247 (9th Cir.  
 7 2013). Las Vegas Sands has sufficiently alleged each of these elements.

8 30. Las Vegas Sands has alleged the ownership of valid and protectable federally  
 9 registered trademarks including, without limitation, the VENETIAN Mark and the VENETIAN  
 10 Design Mark for use in connection with, among other services, “casino and gaming services.”  
 11 (ECF No. 1, Compl. ¶¶ 10-11.) “Federal registration of a trademark constitutes *prima facie*  
 12 evidence of the validity of the registered mark and of [the registrant’s] exclusive right to use that  
 13 mark in commerce.” *Quicksilver, Inc. v. Kymsta Corp.*, 466 F.3d 749, 755 (9th Cir. 2006). Thus,  
 14 Las Vegas Sands’ ownership of a valid and protectable trademark is plausibly alleged.

15 31. Las Vegas Sands has alleged that the Defendants are using a confusingly similar  
 16 mark, namely, the VENETIAN Design Mark, on the websites of their online casinos, and the  
 17 Complaint contains images from the Defendants’ online casino websites showing the  
 18 Defendants’ use of a nearly verbatim copy of the VENETIAN Design Mark. (*Id.*, Compl. ¶¶ 14-  
 19 19.) The Complaint alleges that, through their online casinos, the Defendants, “offer specific  
 20 casino games such as card games, roulette, or dice games, the same games offered by Las Vegas  
 21 Sands at The Venetian and The Venetian Macao.” (*Id.* ¶ 20) The Complaint also alleges that the  
 22 Defendants’ online casinos, “permit gamblers to register, create individual financial accounts,  
 23 and gamble online,” and that, “Las Vegas Sands has not consented to, approved of, or authorized  
 24 Defendants’ use of the VENETIAN Mark or the VENETIAN Design Mark . . . .” (*Id.* ¶¶ 21-22.)  
 25 Thus, Las Vegas Sands has alleged the Defendants’ use of a confusingly similar mark.

26 32. Having plausibly alleged both elements, Las Vegas Sands has stated a *prima facie*  
 27 claim for trademark infringement under the Lanham Act. Accordingly, the second and third  
 28 *Eitel* factors favor entry of default judgment.

1 ***Factor 4 – The Sum of Money at Stake in the Action***

2 33. The fourth *Eitel* factor considers “the amount of money at stake in relation to the  
3 seriousness of [the] Defendants’ conduct.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176. “If the sum  
4 of money at issue is reasonably proportionate to the harm caused by the defendant’s actions, then  
5 default judgment is warranted.” *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916,  
6 921 (N.D. Cal. 2010).

7 34. Given the Defendants’ default, Las Vegas Sands will likely never know how  
8 much harm the Defendants’ impersonation of Las Vegas Sands has done to Las Vegas Sands’  
9 reputation or precisely how much revenue the Defendants have derived from their online casino  
10 websites.

11 35. The Complaint alleges more than sufficient facts for the Court to conclude that  
12 the Defendants’ acts of trademark infringement were egregious and willful, and that Las Vegas  
13 Sands has suffered significant harm to the value of its trademarks and to the reputation and  
14 goodwill it has developed in them. The Defendants have attempted to falsely impersonate Las  
15 Vegas Sands. The Defendants’ use of the VENETIAN Mark and VENETIAN Design Mark on  
16 the webpages of online casinos was no accident or mistake. Las Vegas Sands began using the  
17 VENETIAN Marks in 1999. (Doc. 1, Compl. ¶ 7.) In addition, the Defendants received notice of  
18 this action – they were served with the Summons and Complaint – yet failed to answer or defend  
19 against this action and continue their unlawful use of the VENETIAN Mark and VENETIAN  
20 Design Mark on unlawful online casinos.

21 36. The Defendants’ conduct of intentionally adopting and using Las Vegas Sands’  
22 trademarks has been egregious. Given the foregoing, the injunctive relief sought is proportionate  
23 to the harm caused by the Defendants’ actions. Accordingly, the fourth *Eitel* factor favors entry  
24 of default judgment.

25 ***Factor 5 - The Possibility of a Dispute Concerning Material Facts***

26 37. The fifth *Eitel* factor considers the possibility of dispute as to any material facts in  
27 the case. *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. There is little possibility of a dispute  
28 concerning material facts here. Las Vegas Sands’ Complaint is plausible and supported by



website screenshots, federal trademark registrations, and detailed allegations showing that the Defendants have blatantly infringed upon Las Vegas Sands' rights in its federally registered trademarks. (*See generally* Doc. 1, Compl. ¶¶ 6-24.) As noted above, upon entry of default, all factual allegations of the complaint, except those relating to the amount of damages, are taken as true. *Televideo Video Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987); *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977); *O'Brien*, 2010 U.S. Dist. LEXIS 101941, at \*13 ("Once the court clerk enters a default, the well-pleaded factual allegations of the complaint are taken as true, except for those allegations relating to damages."). Given the sufficiency of the Complaint and the fact that Las Vegas Sands' allegations must be accepted as true, no dispute of material fact precludes default judgment. *See, e.g., Wecosign, Inc., v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012) ("Where a plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning material facts is remote."); *Landstar Ranger, Inc.*, 725 F. Supp. 2d at 921-22 ("Since [plaintiff] has supported its claims with ample evidence, and defendant has made no attempt to challenge the accuracy of the allegations in the complaint, no factual disputes exist that preclude the entry of default judgment."); *Kloeping v. Fireman's Fund*, Case No. C 94-2684 THE, 1996 U.S. Dist. LEXIS 1786, at \*11 (N.D. Cal. Feb. 13, 1996) ("[p]laintiff's presumptively accurate factual allegations leave little room for dispute. In addition, . . . the Court also notes that defendant had the opportunity to dispute the facts alleged, but has avoided and utterly failed to respond to plaintiff's allegations."). Accordingly, the fifth *Eitel* factor favors entry of default judgment.

***Factor 6 – Whether the Defendant's Default Was Due to Excusable Neglect***

38. The sixth *Eitel* factor favors default judgment where the defendant has been properly served or the plaintiff demonstrates that the defendant is aware of the lawsuit. *Landstar Ranger Inc.*, 725 F. Supp. 2d at 922. A defendant's conduct is culpable, rather than excusable, if the defendant received actual or constructive notice of the filing of the action and failed to answer. *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987). The Defendants were properly served with the Summons and Complaint and are aware of this action. (ECF Nos. 1, 17.) Accordingly, the sixth *Eitel* factor favors entry of default judgment.

1 ***Factor 7 – The Strong Policy Favoring Decisions on the Merits***

2 39. The seventh *Eitel* factor considers the public policy that “[c]ases should be  
3 decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. Nevertheless,  
4 a default judgment is appropriate where a defendant deliberately neglects to wage a defense. *See*  
5 *PepsiCo., Inc.*, 238 F. Supp. at 1177 (“Defendant’s failure to answer Plaintiffs’ Complaint makes  
6 a decision on the merits impractical, if not impossible”). Rule 55 was designed to address this  
7 problem. *Landstar Ranger, Inc.*, 725 F. Supp. 2d at 922. Where it is impossible to adjudicate an  
8 action on the merits because a defendant refuses to participate in litigation, the strong policy  
9 favoring decisions on the merits is outweighed by the need to finalize controversies in a timely  
10 and orderly fashion, *id.*, as well as by the public policy favoring judicial economy. *See O’Brien*,  
11 2010 U.S. Dist. LEXIS 101941, at \*17-18 (stating that the Court was “compelled” to enter  
12 default judgment “in the interest of judicial efficiency”). Here, the Defendants were served with  
13 the Summons and Complaint and have refused to participate in this litigation. Under these  
14 circumstances, the policies favoring finality and judicial economy outweigh the policy favoring a  
15 decision on the merits. Accordingly, the seventh *Eitel* factor favors entry of default judgment.

16 ***Summary of the Eitel Factors***

17 40. All of the *Eitel* factors favor entry of default judgment. Accordingly, the Court  
18 will grant Las Vegas Sands’ motion for default judgment.

19 **D. Permanent Injunction**

20 41. The Lanham Act “vests the district court with the power to grant injunctions  
21 according to principles of equity and upon such terms as the court may deem reasonable, to  
22 prevent the violation of any right of the trademark owner.” *Reno Air Racing Ass’n v. McCord*,  
23 452 F.3d 1126, 1137 (9th Cir. 2006) (citing 15 U.S.C. § 1116). “Injunctive relief is the remedy  
24 of choice for trademark and unfair competition cases, since there is no adequate remedy at law  
25 for the injury caused by defendants’ continuing infringement.” *Century 21 Real Estate Corp. v.*  
26 *Sandlin*, 846 F.2d 1175, 1180 (9th Cir. 1988).

27 42. In this case, Las Vegas Sands seeks entry of a permanent injunction prohibiting  
28 the Defendants and any other person acting in concert or participation with them, from using any



1 reproduction, counterfeit, copy, or colorable imitation of the VENETIAN Mark or the  
 2 VENETIAN Design Mark, in commerce including, without limitation: (a) by selling, offering for  
 3 sale, distributing, promoting, or advertising any good or service in connection with any  
 4 reproduction, counterfeit, copy, or colorable imitation of the VENETIAN Mark or the  
 5 VENETIAN Design Mark; and (b) by displaying any reproduction, counterfeit, copy, or  
 6 colorable imitation of the VENETIAN Mark or the VENETIAN Design Mark anywhere in the  
 7 United States, including within any Internet domain name or on any Internet website.

8 43. A party seeking a permanent injunction must establish the following: (1) actual  
 9 success on the merits; (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is  
 10 not granted; (3) a balance of hardships favoring the plaintiff; and (4) advancement of the public  
 11 interest. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 374, 381, 172 L.  
 12 Ed. 2d 249 (2008) (citation omitted). Each of these elements is satisfied.

13 44. First, a permanent injunction is warranted because Las Vegas Sands has achieved  
 14 “actual success on the merits” through the Defendants’ default, as set forth above.

15 45. Second, the Complaint’s allegations which must be accepted as true on a motion  
 16 for default judgment, *Heidenthal*, 826 F.2d at 917-18, and the undisputed facts set forth in the  
 17 Declaration of Dave Horton (ECF No. 2-1) show that Las Vegas Sands has suffered and will  
 18 continue to suffer actual irreparable injury and harm to the good reputation and goodwill it has  
 19 established in the VENETIAN Mark and VENETIAN Design Mark absent permanent injunctive  
 20 relief. *See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603  
 21 (9th Cir. 1991) (citation omitted) (“[I]ntangible injuries, such as damage to . . . goodwill, qualify  
 22 as irreparable harm.”); *MySpace, Inc. v. Wallace*, 498 F. Supp. 2d 1293, 1305 (C.D. Cal. 2007)  
 23 (“Harm to business goodwill and reputation is unquantifiable and considered irreparable.”).

24 The Complaint alleges the following:

25 The VENETIAN Mark and the VENETIAN Design Mark are embodiments of  
 26 the substantial goodwill and excellent reputation Las Vegas Sands and its  
 27 predecessors have developed as a premier provider of entertainment and casino  
 28 services. As a result of Defendants’ blatant exploitation of Las Vegas Sands’  
 trademarks without Las Vegas Sands’ consent, Las Vegas Sands has lost control  
 over the VENETIAN Mark and the VENETIAN Design Mark. This loss of

control over its goodwill and reputation is irreparable and Las Vegas Sands cannot be adequately compensated by an award of money damages alone. **For example, Las Vegas Sands opposes legalized Internet gambling in the United States and elsewhere, and Defendants' use of the VENETIAN Mark and the VENETIAN Design Mark on the homepages of online casinos, even though unauthorized by Las Vegas Sands, threatens to dilute and detract from Las Vegas Sands' message and its efforts to stop the proliferation of online gambling.**

(ECF No. 1, Compl. ¶ 23.) (Emphasis added.)

46. The Declaration of Dave Horton states the following:

The VENETIAN Mark and the VENETIAN Design Mark are embodiments of the substantial goodwill and excellent reputation Las Vegas Sands and its predecessors have developed as a premier provider of entertainment and casino services. As a result of Defendants' blatant exploitation of Las Vegas Sands' trademarks without Las Vegas Sands' consent, Las Vegas Sands has lost control over the VENETIAN Mark and the VENETIAN Design Mark. This loss of control over its goodwill and reputation is irreparable and Las Vegas Sands cannot be adequately compensated by an award of money damages alone.

As set forth above, the Defendants are operating Internet casinos that are accessible to consumers located in the United States. The Defendants are doing so using identical versions of the VENETIAN Mark and the VENETIAN Design Mark used by Las Vegas Sands. In addition, both Las Vegas Sands and the Defendants are providing the same services under the VENETIAN Mark and the VENETIAN Design Mark. Las Vegas Sands has been providing gaming services under the VENETIAN Mark and the VENETIAN Design Mark since 1999. The Defendants' online casinos provide gaming services and, in some cases, purport to allow users to participate in live casino games being played at brick-and-mortar casinos by proxy.

Because of the likelihood that confused consumers will mistakenly attribute to Las Vegas Sands defects or negative impressions they have of Defendants' gaming services, Las Vegas Sands' excellent reputation has been harmed and continues to be threatened. Consumer confusion has occurred, is continuing to occur, and is inevitable, resulting in a loss of control over Las Vegas Sands' reputation and goodwill.

Here, the gambling public is aware of the Defendants' and similar online casinos, have had negative experiences with them, and have associated those negative experiences with Las Vegas Sands. For example, as cited in an earlier case filed by Las Vegas Sands against similar online casinos, on or about January 10, 2014, Las Vegas Sands received an email from a person who claims to have been cheated by an online casino operated at [www.358.com](http://www.358.com), a Chinese Internet casino that used Las Vegas Sands' world famous "Sands" trademark. The email states:



I am playing the game at sands (www.358.com). (www.358.com) is cheating me. They do not pay money to me from 2014-1-8. They are cheats. I am very angry. My account name is myray. Please help me. I am in Shanghai, China.

(See No. 2:14-cv-00424-JCM-NJK, *Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp. et al.*, Doc. 4, Decl. of Dave Horton in Supp. of Pl.'s *Ex Parte* Mot. for TRO, Alternative Service, and Prelim. Inj., dated March 19, 2014 ¶ 24.) (Emphasis added.)

Upon information and belief, there are additional consumers who have been deceived and confused by the Defendants' use of the VENETIAN Mark and the VENETIAN Design Mark on their online casinos but who have not reported the Defendants' fraudulent conduct to Las Vegas Sands. **Based upon their negative experiences, persons who associate Las Vegas Sands with the Defendants' fraudulent activities due to the Defendants' use of the VENETIAN Mark and the VENETIAN Design Mark have a negative opinion of Las Vegas Sands, and are extremely unlikely to ever become customers or repeat consumers of Las Vegas Sands' gaming services, and are likely to tell others about their negative experiences.**

In addition, Las Vegas Sands' has achieved an excellent reputation for providing gaming services under the VENETIAN Mark and the VENETIAN Design Mark, in-part, because Las Vegas Sands' casinos are regulated and licensed in their respective jurisdictions, and adhere to the federal, state, and local statutes, rules, regulations, and ordinances that govern the provision of gaming services in their respective jurisdictions. Many of these laws, rules, regulations, and ordinances are designed to, among other things, inspire consumer confidence in gaming, protect the consuming public from fraud and other unscrupulous gaming practices, provide a means of settling gambling disputes, and protect vulnerable persons. For example, in Nevada, Las Vegas Sands may not provide gaming services to persons under 21 years of age. *See Nev. Rev. Stat. § 463.350.* Las Vegas Sands' lawful gaming activities are also subject to close scrutiny and oversight by State gaming regulators. In contrast, the Defendants' online casinos are not regulated by any legitimate governing body, do not operate according to any recognized standards, and appear to have no quality control safeguards, consumer protection safeguards, or legitimate means of resolving gaming disputes. Thus, there are no safeguards preventing at-risk persons, such as persons under the age of 21, from being defrauded or otherwise victimized by the Defendants' casinos. Upon information and belief, in addition to engaging in fraudulent gaming practices, the Defendants are providing gaming services, without restriction, to any person who utilizes Defendants' services. To the extent the Defendants have engaged in fraudulent gaming practices and are providing gaming services to such persons, Las Vegas Sands' reputation has been damaged by the Defendants' use of the VENETIAN Mark and the VENETIAN Design Mark.

1 Upon information and belief, Las Vegas Sands is also losing business to the  
 2 Defendants' online casinos. Persons who would otherwise travel to the United  
 3 States to gamble at Las Vegas Sands' casinos in Las Vegas, Nevada, are instead  
 4 gambling at the Defendants' online casinos. The true scope and extent to which  
 5 the Defendants' activities have resulted in lost revenue and will continue to do  
 6 so is not known, cannot be measured, and will continue in the absence of a  
 7 preliminary injunction.

8 In addition, it is unlikely that Las Vegas Sands will be able to recover on a  
 9 money judgment entered against the Defendants. The defendants are known to  
 10 use false identities and are believed to be principally located in mainland China.

11 Moreover, and most importantly, Defendants are creating the perception that Las  
 12 Vegas Sands has approved of, authorized, affiliated itself with, or sponsored  
 13 Defendants' online gambling services when in fact it has not. Las Vegas Sands  
 14 publicly opposes Internet gambling and has formed the Coalition to Stop  
 15 Internet Gambling, an advocacy group dedicated to preventing the proliferation  
 16 of Internet gambling. Las Vegas Sands and the Coalition to Stop Internet  
 17 Gambling are opposed to the proliferation of online gambling for, among other  
 18 reasons, the fact that insufficient safeguards exist to protect, children, the  
 19 elderly, the mentally handicapped, and others from being defrauded by  
 20 unscrupulous and unregulated Internet casinos, like the very ones operated by  
 21 the Defendants in this case. The Defendants' use of the VENETIAN Mark and  
 22 the VENETIAN Design Mark on the homepages of their online casinos, even  
 23 though unauthorized by Las Vegas Sands, affects Las Vegas Sands' credibility  
 24 and threatens to interfere with Las Vegas Sands' and the Coalition to Stop  
 25 Internet Gambling's efforts to stop the proliferation of Internet gambling. This  
 26 harm cannot be quantified or adequately redressed by an award of money  
 27 damages, and therefore is irreparable.

28 The injuries Las Vegas Sands has suffered, namely, injury to its reputation, loss  
 of sales revenue, and the interference with its efforts to stop the proliferation of  
 Internet gambling are injuries that cannot be measured or compensated for by an  
 award of money damages, and, therefore, are irreparable and will continue in the  
 absence of a preliminary injunction.

(ECF No. 2-1, Decl. of David William Horton ¶¶ 20-29.) (Emphasis in original.)

47. Several district courts have granted injunctions in the default judgment context by  
 accepting as true the facts alleged in plaintiffs' complaints, including facts establishing  
 irreparable injury. *See, e.g., Jellybean Entm't, Inc. v. USNile LLC*, No. 13-cv-144-IEG (WMC),  
 2013 WL 3147737, at \*1 (S.D. Cal. June 19, 2013) (granting injunction in post-*Herb Reed*  
 trademark case, finding irreparable harm based upon allegations in complaint which must be  
 accepted as true upon default); *Innovative Office Products, Inc. v. Amazon.com*, No. 10-4487,



1 2012 WL 1466512, at \*4 (E.D. Pa. Apr. 26, 2012) (granting permanent injunction because  
2 allegations in complaint must be accepted as true and established patent infringement and injury  
3 to plaintiff); *Strange Music, Inc. v. Anderson*, 419 Fed. App'x 707, 707-08 (W.D. Mo. 2011)  
4 (“We conclude that the district court did not abuse its discretion in granting SMI a permanent  
5 injunction, as the injunction was supported by facts alleged in SMI’s complaint, which were  
6 appropriately deemed to be true.”); *Phillip Morris USA, Inc. v. Castworld Prods., Inc.*, 219  
7 F.R.D. 494, 499 (C.D. Cal. 2003) (“since, by defaulting, Defendant is deemed to have admitted  
8 the truth of Plaintiff’s averments, the evidence before the Court established that Plaintiff will  
9 likely suffer great prejudice through the loss of sales and diminution of goodwill if default is not  
10 entered”).

11 48. At bare minimum, these facts support an inference that Las Vegas Sands has  
12 suffered irreparable harm and will continue to suffer irreparable harm absent injunctive relief.  
13 See, e.g., *Ferring Pharmaceuticals, Inc. v. Watson Pharmaceuticals, Inc.*, 765 F.3d 20, 216 (3d  
14 Cir. 2014) (rejecting the presumption of irreparable harm in trademark cases) *discussed in*  
15 *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 205 (3d Cir. 2014) (“By  
16 finding that [plaintiff] SEB established a likelihood of irreparable harm, we are not connecting  
17 these facts using a veiled presumption of irreparable harm. *Ferring* bars such a presumption; we  
18 emphasize, however, that *Ferring* does not bar drawing fair inferences from facts in the record.  
19 Indeed, a key lesson from *Ferring* is that courts considering whether to grant injunctive relief  
20 must exercise their equitable discretion in a case-by-case, fact-specific manner. A critical aspect  
21 of fact-finding in this and other contexts is drawing reasonable inferences from facts in the  
22 record. The inference drawn by Pollard, the District Court, and now this Court—that SEB is  
23 likely to suffer irreparable harm to its brand reputation and goodwill—is supported not by a  
24 general rule or presumption but by the literally false comparative advertising claims at issue, the  
25 competitive relationship between the parties and products, and the judgment of Pollard that the  
26 harm to SEB’s brand reputation and goodwill is impossible to quantify. Nor does *Ferring*  
27 change the rule that harm to reputation and goodwill constitutes irreparable harm, so long as the  
28 plaintiff makes a clear showing. Based on the facts of this case, we conclude that SEB clearly

1 showed a likelihood of irreparable harm to its brand reputation and goodwill.”); *see also, e.g.,*  
2 *Toyo Tire and Rubber Co., Ltd. v. Kabusikiki Kaisha Toyo Nihoon Rubber Corp.*, No. 2:14-cv-  
3 01847-JAD-VCF (D. Nev. Oct. 26, 2015) (overruling magistrate judge’s recommendation that  
4 permanent injunction be denied, finding that facts alleged in complaint and in the declaration of  
5 plaintiff’s director of marketing supported an inference of irreparable harm sufficient to support  
6 permanent injunction).

7 49. Third, the balance of hardships weighs in Las Vegas Sands’ favor. Las Vegas  
8 Sands has expended substantial sums of money using and promoting its VENETIAN Mark and  
9 VENETIAN Design Mark, and any harm to the Defendants resulting from a permanent  
10 injunction that merely forces it to comply with the requirements of the law merits little to no  
11 equitable consideration.

12 50. Fourth, the public interest lies in favor of upholding property interests in  
13 trademarks and preventing customer confusion.

14 51. Accordingly, because Las Vegas Sands has suffered irreparable harm and because  
15 the balance of harms and the public interest weigh in Las Vegas Sands’ favor, the Court will  
16 permanently enjoin the Defendants and all others acting in concert or participation with them  
17 from using the VENETIAN Mark and the VENETIAN Design Mark in commerce.

### 18 **III. ORDER**

19 In light of the foregoing findings of fact and conclusions of law:

20 IT IS HEREBY ORDERED THAT Las Vegas Sands’ motion for default judgment (**ECF**  
21 **No. 20**) is **GRANTED**. The Clerk of the Court shall enter judgment in favor of Las Vegas  
22 Sands and against the Defendants.

23 IT IS FURTHER ORDERED THAT Las Vegas Sands’ motion for permanent injunction  
24 (**ECF No. 20**) is **GRANTED**. The Defendants and all other persons acting in concert or  
25 participation with Defendants are hereby permanently restrained and enjoined from: (a) using the  
26 VENETIAN Mark (as defined above) or the VENETIAN Design Mark (as defined above) or any  
27 confusingly similar variations thereof, alone or in combination with any other letters, words,  
28



1 letter string, phrases or designs in commerce, including, without limitation, on any website, in  
2 any domain name (including, without limitation, in the Domains), in any social network user  
3 name, in any hidden website text, or in any website metatag; and (b) engaging in false or  
4 misleading advertising or commercial activities likely to deceive consumers into believing that  
5 any defendant is Las Vegas Sands or that any defendant's services are associated or affiliated  
6 with, connected to, approved by, or sponsored by Las Vegas Sands.

7 IT IS FURTHER ORDERED that VeriSign, Inc., the domain name registry for the  
8 Domains shall, within three (3) business days of receipt of this Order, and at Las Vegas Sands'  
9 choosing: (a) unlock and change the registrar of record for the Domains to a registrar of Las  
10 Vegas Sands' selection; or (b) disable the Domains and make them inactive and untransferrable.

11 IT IS FURTHER ORDERED that GoDaddy.com, LLC, the registrar for the Domains,  
12 shall, within three (3) business days of receipt of this Order, take any steps necessary to transfer  
13 the Domains to a registrar account of Las Vegas Sands' selection so that the Domains can be  
14 redirected or disabled.

15 IT IS FURTHER ORDERED that the Clerk of the Court shall refund to Las Vegas Sands  
16 the \$100 that Las Vegas Sands previously deposited as security for the Court's temporary and  
17 preliminary injunctions in this case.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment  
19 accordingly.

20 ENTERED this 3<sup>rd</sup> day of May, 2016.

21 

22 **UNITED STATES DISTRICT JUDGE**